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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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APR 18 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of Section 9 )  
of the Communications Act )  
 )  
Assessment and Collection of )  
Regulatory Fees for the 1994 )  
Fiscal Year )  
 )  
 )  
 )

MD Docket No. 94-19

**REPLY COMMENTS OF WILTEL, INC.**

WilTel, Inc. ("WilTel") respectfully submits the following Reply Comments in the above-captioned proceeding pursuant to the comment cycle established by the Commission's Notice of Proposed Rulemaking released March 11, 1994 ("Fee NPRM").

WilTel opposes AT&T's proposal that the Commission adopt carrier gross interstate revenue as the basis for establishing regulatory fees to be paid by interexchange carriers ("IXCs"). See AT&T Comments at 3 (filed Apr. 7, 1994). AT&T's proposal would impose a significant penalty upon the resale market which plays a significant role in the competitive long distance market by preventing discrimination and affording small and medium-sized customers access to low-cost telecommunications. AT&T's proposal should therefore be rejected.

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A gross revenue formula necessarily will assess a carrier for its revenues attributable to any resellers (which are also subject to regulatory fees) as well as revenues attributable to end users.<sup>1</sup> Such a double assessment is both discriminatory and anticompetitive. By virtue of levying an assessment upon the same service twice,<sup>2</sup> such a fee structure penalizes the underlying carrier, the reseller, and the end user. The reseller is penalized in the form of higher underlying costs. The underlying carrier is also penalized by decreased reseller revenue due to the resulting decreased competitiveness of resellers. The end user customers of resellers, typically customers that are too small to receive discounts targeted at larger customers by larger carriers, are also penalized; those end users will pay, and in all likelihood pay more, for a service that has been assessed (at least) twice: at the reseller and facilities-based carrier levels. Ultimately, all end users will pay more if the

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<sup>1</sup>Thus, if Carrier A received \$1,000 from the sale of services to end users, and if the assessment rate were two percent of gross revenues, then it would pay an assessment of \$20. However, if Carrier A also received \$1,000 from the sale of service to Carrier B, which in turn resold the service to an end user for \$1,000, both Carrier A and Carrier B would pay assessments of \$20. Resold services are therefore assessed at roughly double the rate assessed services sold directly.

<sup>2</sup>The assessment in some cases may be more than double. For example, WilTel obtains a substantial number of lines from other facilities-based carriers. Where a reseller of WilTel's network sells a service that utilizes those lines, the end user will pay for a service that has been assessed three times: at the level of WilTel's service provider, at WilTel's level, and at the reseller's level.

competition generated by resellers is reduced or eliminated and rates are no longer subject to competitive pressures through reseller arbitrage.

The Commission has long pointed to interexchange resale as an important means of introducing competition to the telecommunications industry,<sup>3</sup> and has in fact prohibited discrimination against resellers in order to foster the public benefits brought by competition through resale.<sup>4</sup> Obviously, a system of fees that disproportionately burdens the resale market and resale customers is inconsistent with basic Commission policy and should not be adopted absent substantial reasons such as a clear statutory mandate.<sup>5</sup>

WilTel notes that the method prescribed by Congress, based upon presubscribed lines, does not impose such an unfair

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<sup>3</sup>See, e.g., Competitive Carrier Rulemaking, First Report & Order, 85 FCC2d 1, 29 (1980) (noting essential role of resellers in "enforc[ing] good industry practices.").

<sup>4</sup>See Resale and Shared Use, Report & Order, 60 FCC2d 261 (1976) (prohibiting tariff provisions restricting resale and sharing), Recon. Order, 62 FCC2d 588 (1977), aff'd, American Tel. and Tel. Co. v. FCC, 572 F.2d 17 (2d Cir.), cert. denied, 439 U.S. 875 (1978).

<sup>5</sup>The Commission adopted a gross revenue formula in the TRS proceeding not as a matter of policy, but rather as a matter of statutory construction. See Telecommunications Relay Services, 8 FCC Rcd 5300, 5302 (1993) ("TRS III"). Admittedly, in another context the Commission has adopted a fee structure based upon gross interstate revenues without any clear statutory requirement for such a structure. See Policies and Rules Concerning Operator Service Access and Pay Tel. Compensation, Memorandum Opinion & Order on Recon., 8 FCC Rcd 7151, appeal docketed, WilTel v. FCC, Case No. 93-1790 (D.C. Cir. 1993), consol. with, Florida Pay Tel. Ass'n v. FCC, Case No. 91-1486. However, that decision has been challenged.

and discriminatory double assessment upon the resale market. However, should the Commission elect to revise the statutory IXC fee methodology on a going-forward basis, it should ensure that the resale market is not made less viable by discriminatory regulatory burdens. One simple means of eliminating such discrimination would be to assess fees based upon non-carrier (i.e., non-reseller) revenue. It is a general industry practice to serve carrier and end user customers with different business units as well as to distinguish between carrier and end user revenues. Therefore, assessing fees based upon non-carrier revenue would impose no additional burdens upon IXCs while at the same time avoiding the imposition of a regulatory penalty upon the resale market.

WILTEL INC.

April 18, 1994

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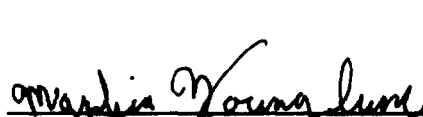
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**CERTIFICATE OF SERVICE**

I, Marshia Younglund, hereby certify that copies of the foregoing **REPLY COMMENTS OF WILTEL, INC.** were served (unless otherwise noted) by first-class United States mail, postage prepaid, upon the parties appearing on the attached service list April 18, 1994.

  
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